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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF OREGON

9 MICKEY C. WEBB,

Civil No. 03-15-AA
O R D E R

10 Plaintiff,

11 vs.

12 JO ANNE B. BARNHART,
13 Commissioner of Social Security,

14 Defendants.

15 AIKEN, Judge:

16 Plaintiff filed a motion for fees, costs and expenses
17 pursuant to the Equal Access to Justice Act (EAJA) in the amount
18 of \$11,786.87. 28 U.S.C. § 2412(d)(1)(A). That motion (doc. 36
19 and 37) is DENIED. The Ninth Circuit Court of Appeals, however,
20 found that the Commissioner's position was "substantially
21 justified" in a June 13, 2006 Order. (Attached as Exhibit to
22 Commissioner's Supplemental Response in Opposition to EAJA). That
23 Order states in relevant part:

24 Appellant's untimely motion is also without merit. The
25 government's position had a reasonable basis in law and
26 fact and was substantially justified in the sense
required by EAJA.

27 Order, p. 1.

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1 Pursuant to 28 U.S.C. § 2412(d)(1)(A), except as otherwise
2 specifically provided by statute, a court shall award a prevailing
3 party attorney fees and expenses unless the court finds that the
4 position of the United States was substantially justified or that
5 special circumstances make an award unjust. The Ninth Circuit's
6 Order referenced above binds this court and compels it to deny
7 plaintiff's EAJA request. See City of Los Angeles v. Santa Monica
8 Baykeeper, 254 F.3d 882, 889 (9th Cir. 2001) (explaining "law of the
9 case" doctrine, district court bound to follow appellate court's
10 decision as to issues previously decided explicitly or by
11 implication in the same case).

12 IT IS SO ORDERED.

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14 Dated this 16 day of July 2006.

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18 /s/ Ann Aiken
19 Ann Aiken
20 United States District Judge
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